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February 6, 2003

VIA ELECTRONIC FILING

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Ex Parte*: Review of the Unbundling Obligations of Incumbent Local Exchange Carriers--CC Docket No. 01-338; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996--CC Docket CC No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability--CC Docket No. 98-167**

Dear Ms. Dortch:

OnFiber Communications, Inc. ("OnFiber"), by its attorneys, hereby submits this *ex parte* letter in support of recent filings by Dominion Telecom, Inc., and several other parties, regarding the unbundling of dark fiber loops.¹ OnFiber submits that the record of this proceeding clearly demonstrates that dark fiber loops meet the Section 251(d)(2) statutory impairment standard, and therefore, the Commission should continue to require that unbundled dark fiber loops be provided to requesting carriers on a just, reasonable and non-discriminatory basis.

Founded in 1999, OnFiber is a leading builder and operator of fiber optic networks in the United States. OnFiber operates fiber optic networks in twelve major

¹ See Letter from Robert J. Aamoth, Kelley Drye & Warren, and Alan J. Dole, Dominion Telecom to Chairman Powell, CC Docket Nos. 01-338 *et al.* (Jan. 28, 2003); Joint Comments of NuVox, KMC, e.spire, TDS Metrocom, MFN, and SNIp LiNK, Docket No. 01-338, at 77-80 (filed Apr. 5, 2002) ("CLEC Coalition Comments"); Joint Reply Comments of NuVox, KMC, e.spire, TDS Metrocom, MFN, and SNIp LiNK, at 53-57 (filed July 17, 2002) ("CLEC Coalition Reply Comments"); *Ex Parte* Presentation of El Paso Networks, LLC and Conversant Communications, LLC, Docket Nos. 01-338 *et al.* (Nov. 26, 2002) ("El Paso *Ex Parte*"); Letter from Lawrence R. Freedman, Counsel for Norlight Telecommunications, Inc. to Marlene Dortch, Secretary, FCC, Docket Nos. 01-338 *et al.* (filed Dec. 20, 2002) ("Norlight *Ex Parte*").

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metropolitan areas, including: Atlanta, Chicago, Dallas, Denver, Houston, Los Angeles, New York City, Miami, Philadelphia, San Francisco, Seattle and Washington D.C. OnFiber provides connectivity solutions between major traffic aggregation points on the network, as well as fiber-optic local loop connectivity. OnFiber's metro core network provides the "backbone" infrastructure that connects traffic aggregation points such as data centers, carrier hotels, and other service provider points of presence ("POPs") to the access network, which extends a direct fiber connection to enterprise businesses and commercial buildings OnFiber's "Homerun"TM fiber loops. However, without continued access to unbundled dark fiber loops, OnFiber's ability to effectively operate its network would be in severe jeopardy.

Given the role of dark fiber in enabling the growth of local telecommunications competition, OnFiber submits that eliminating the dark fiber unbundling requirement would materially impair CLECs in providing competitive services to American consumers. We submit that the Commission can require that dark fiber be unbundled pursuant to virtually any unbundling standard adopted in this proceeding. OnFiber agrees with Dominion, and other commenters in this proceeding, that dark fiber loops clearly meet the Section 251(d)(2) "impair" test. Specifically, without unbundled access to dark fiber loops, carriers such as OnFiber would be unable to provide the services that they seek to offer.² The Commission's impairment analysis must be undertaken against the backdrop of the D.C. Circuit's decision in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA*"), wherein the *USTA* court instructed the Commission with regard to the competitive need for a particular element to establish an impairment standard that "point[s] to something a bit more concrete"³ than the nationwide unbundling rules the Commission previously adopted.

As Dominion demonstrated, the vast expense associated with deployment of dark fiber loop architectures preclude self-provisioning prohibitively expensive and prevents the development of any kind of "alternate" or third party market from developing. Under these circumstances—where there is no practical, economic, and operational substitute for a UNE—the Commission must continue to require that dark fiber be unbundled. In order to provide services to customers on a cost effective and ubiquitous basis, OnFiber must have access to "last mile" facilities to interconnect end-users with its extensive metro backbone networks.

Without continued access to unbundled dark fiber loops at TELRIC rates, OnFiber will not be able to fully utilize its network, and its entry into new markets will be severely restrained, if not completely undermined. The Commission, therefore, should continue to require that dark fiber loops be provided on an unbundled basis and free of use restrictions. Further, the Commission should adopt Dominion's proposed amendments to Rule 51.319, as set forth in its January 28, 2003 *ex parte*, to ensure that dark fiber loops are provisioned in a just,

² See 47 U.S.C. § 251(d)(2) ("In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether ... the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.").

³ *USTA*, 290 F.3d at 425.

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reasonable and nondiscriminatory manner in keeping with Congress's mandates under Section 251.

Sincerely,



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